

BEFORE THE INVESTIGATIVE PANEL OF THE  
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING JUDGE  
HOWARD C. BERMAN, JQC NO.  
00-211

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CASE NO. SC00-2491

MOTION TO COMPEL TESTIMONY FROM JOANNE KOTZEN

JUDGE HOWARD BERMAN, by and through undersigned counsel, moves for an order compelling testimony from the witness, JOANNE KOTZEN, as follows:

1. Ms. Kotzen's deposition was taken on Tuesday, March 6, 2001. Ms. Kotzen is and was at all times material hereto a member of The Florida Bar. She is one of the persons whose accusations against Judge Berman are described in the Notice of Formal Charges.

2. During the deposition, Ms. Kotzen made several allegations with regard to conduct by JUDGE BERMAN which the witness deemed inappropriate.

3. Ms. Kotzen was asked whether she had, within the last ten years, ever used illegal drugs. Her attorney, Joseph Reiter, instructed her not to answer. The colloquy between Ms. King, JUDGE BERMAN's attorney, and Mr. Reiter, made it clear that the inquiry was to be directed to the time period during which the allegations against Judge Berman occurred. Nevertheless, Mr. Reiter continued his instruction to her not to answer (see excerpts of Ms. Kotzen's deposition attached as Exhibit A).

4. Under Florida law, the evidence of a witness' use of drugs is admissible under certain circumstances. Such evidence is admissible if it can be

shown that the witness was using drugs at or about the time of the incident which is the subject of the witness' testimony. Such evidence can be introduced if it can be shown that the witness was using drugs at or about the time of the testimony itself. Such evidence is admissible if it is expressly shown by other relevant evidence that the prior drug use affects the witness' ability to observe, remember, and recount. Edwards v. State, 548 So. 2d 656 (Fla. 1989) (and authorities cited therein).

5. Here, Ms. Kotzen's attorney terminated the inquiry in discovery at the very initial stage of questioning. Since evidence of drug use is admissible under the circumstances described in the preceding paragraph, inquiry with regard to a witness' former drug use is certainly reasonable calculated to lead to the discovery of admissible evidence.

WHEREFORE, JUDGE BERMAN seeks an order compelling the witness, JOANNE KOTZEN, to answer the questions posed.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the persons on the attached Service List this 25th day of May, 2001.

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